APPELLANT PRO SE:

ROBERT WILLIAM WHITE
West Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

MATTHEW SOLOMON
CYNTHIA ROSE
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE PATERNITY OF K.B.W.	)	
ROBERT WILLIAM WHITE,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0702-JV-116
K.B.W. by next friend MARTI ANNE CRIST, a/k/a MARTI ANNE DIETRICH, n/k/a MARTI ANNE RYAN,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Alicia Gooden, Judge
Cause No. 49C01-9408-JP-2701

October 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Robert W. White (White), appeals the trial court's decision to relinquish jurisdiction to Florida under Indiana's adoption of the Uniform Child Custody Jurisdiction Act (UCCJA).

We affirm.

ISSUE

White raises five issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion by relinquishing jurisdiction because (1) White was not afforded a hearing on the matter, in effect violating his due process rights, (2) Florida is an inconvenient forum, and (3) the trial court should have considered the Americans with Disabilities Act when reaching its decision.

FACTS AND PROCEDURAL HISTORY

On May 3, 1994, K.B.W. was born to Marti Anne Ryan (Ryan) and White; paternity was established August 19, 1994. On March 12, 2004, Ryan submitted a letter to the trial court of her intention to relocate to Florida. On May 6, 2004, White filed a Verified Petition for Modification of Custody and for Contempt Citation in Indiana. On June 15, 2004, a hearing was held on the petition wherein a final hearing on the matter was set for October 19, 2004. However, on June 19, 2004, White was involved in an accident paralyzing him from the waist down. Due to his injuries, White discontinued his efforts to obtain custody of his son and agreed that K.B.W. should move to Florida with Ryan. Ryan and K.B.W. moved July 29, 2004.

On October 28, 2004, an Agreed Modification of Decree was entered into between

White and Ryan addressing changes regarding Ryan and K.B.W.'s relocation to Florida. Thereafter, on June 5, 2006, Ryan filed a Petition to Establish Foreign Decree as a Florida Decree to Enforce and Modify Judgment in Florida. In response, White filed a Motion to Dismiss.[1] On October 10, 2006, White filed a Petition to Notify a Foreign Court that the Paternity Court of Marion County has Continuing Jurisdiction of the Above Case and a Motion to Show Cause in Indiana. A hearing was set for November 22, 2006, but before then a telephonic conference was held between the Indiana and Florida trial courts to decide the jurisdictional conflict. Ryan's attorney in Florida was present for the conference; White did not appear in person, or by counsel. On January 3, 2007, the Florida trial court issued an Order on Joint Judicial Conference Regarding Jurisdiction Pursuant to the UCCJA stating, in pertinent part:

> THIS CAUSE, having come to be heard on November 15, 2006, upon Hearing with Indiana [c]ourt to Determine Jurisdiction, and the Honorable Diana Moreland and Honorable Alicia Gooden of Marion County, Indiana, having participated, and the attorney for [Ryan] having appeared, and [White] having not appeared, and this matter having been recorded by the Clerk, as required, and the [c]ourt otherwise being fully advised in the premises, hereby,
>
> ORDERS AND ADJUDGES that
>
> 1. [Ryan] and [K.B.W.] have resided in Florida since the summer of 2004, and Florida is the home state of [K.B.W.].
>
> 2. The parties stipulated to a modification of the Indiana Final Judgment in October 2004, in which they agreed that [Ryan] and [K.B.W.] would relocate to Florida. The parties did not agree that Indiana should retain jurisdiction of the matter, therefore the Indiana [c]ourt declines to exercise further jurisdiction in this matter and relinquished further jurisdiction of the parties and this matter. The Order to Appear and Show Cause in Indiana

[1] It does not appear from our review of the record that this Motion to Dismiss was ever ruled on by the Florida trial court.

scheduled for November 22, 2006, is vacated.

3. Florida agrees to exercise jurisdiction for all pending and future matters arising between the parties and in this matter.

(Appellant's Appendix p. 125). After the conference, White filed a Motion to Correct Error, a Motion to Reconsider, and a Request for Oral Argument with the Indiana trial court, all of which were subsequently denied.

White now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

In determining whether a trial court has improperly exercised jurisdiction under the UCCJA, we apply an abuse of discretion standard. *In re Paternity of R.A.F.*, 766 N.E.2d 718, 723 (Ind. Ct. App. 2002), *reh'g denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.*

The UCCJA is the "exclusive method of determining the subject matter jurisdiction of a court in a custody dispute with an interstate dimension." *Id.* (quoting *Caban v. Healey*, 634 N.E.2d 540, 542 (Ind. Ct. App. 1994), *reh'g denied*, *trans. denied*). Under the UCCJA, the court which first enters a custody decree on a matter gains exclusive jurisdiction only until the child and all parties have left the state. *In re Paternity of R.A.F.*, 766 N.E.2d at 723. This court has stated:

> The fundamental principle underlying the UCCJA is that once a court with a jurisdictional basis exercises jurisdiction over a "custody" issue, that court retains exclusive jurisdiction over all custody matters so long as a "significant connection" remains between the controversy and the state, and that court alone has discretion to decide whether it will defer jurisdiction to the court of another state upon the basis that the other court is a more convenient forum to

> litigate the issues. A "significant connection" remains under the scheme as long as one parent continues to reside in the state rendering the initial determination.

Id. (quoting *Matter of E.H.*, 612 N.E.2d 174, 185 (Ind. Ct. App. 1993), *reh'g denied*, *opinion adopted*, 624 N.E.2d 471 (Ind. 1993) (internal citations omitted)). Therefore, because an Indiana court entered the original custody determination in K.B.W.'s paternity action, and because White continues to reside in Indiana, the Indiana court has continuing exclusive jurisdiction of custody matters concerning K.B.W., despite his relocation to Florida with Ryan.

It is true, however, that a court with exclusive jurisdiction may decline to exercise its jurisdiction if it determines that a different forum is in a better position to entertain the litigation. *In re Paternity of R.A.F.*, 766 N.E.2d at 724. The relevant portion of Indiana's version of the UCCJA states:

> (a) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.
>
> * * *
>
> (d) Before determining whether to decline to retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

Ind. Code § 31-17-3-7 (repealed 2007). Here, the Indiana and Florida courts communicated with one another concerning the appropriate course of action in this matter and determined

Florida courts should acquire jurisdiction based on the contacts Ryan and K.B.W. have developed with the State of Florida.

I. *Due Process*

Consequently, White argues his due process rights under the Fourteenth Amendment of the United States Constitution were violated. As support, White cites to I.C. § 31-17-3-4 (repealed 2007),[2] which states:

> Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 5 of this chapter.

However, as we held in *Cox v. Cantrell*, 866 N.E.2d 798, 809 (Ind. Ct. App. 2007), *reh'g denied*, when an Indiana court had a telephonic conference with a Michigan judge, "the trial court's order finding that Michigan is the more appropriate forum does not, and in fact has not, precluded Father from actively participating in the Michigan custody proceeding." For the same reasons, we find the same true in the instant case.

> We will not read into a statute that which is not the manifest intent of the legislature. For this reason, it is as important to recognize not only what a statute says, but also what a statute does not say. Indiana's statute does not provide that a court is required to give notice and an opportunity to be heard before communicating with a court in another jurisdiction to determine the appropriate forum . . . .

[2] The Uniform Child Custody Jurisdiction Act was repealed by Public Law 138-2007, Sec. 93, effective April 8, 2007, and the Child Custody Jurisdiction and Enforcement Act was enacted effective August 15, 2007.

Id. Just as we declined to read such a requirement into the statute then, we decline to do so now. Therefore, we find there was no due process violation, nor do we find the trial court abused its discretion by relinquishing jurisdiction to Florida.

II. *Inconvenient Forum*

White next argues the trial court abused its discretion by relinquishing jurisdiction to Florida because Indiana is the most convenient forum. As previously mentioned, there is no dispute that Indiana, as the state originally entering the custody order, retained jurisdiction over this matter. However, pursuant to I.C. § 31-17-3-7(a) (repealed 2007), a trial court may decline to exercise continued jurisdiction in a custody matter if it concludes that it has become an inconvenient forum.

There are a number of factors that a court may consider in determining whether another state is a more appropriate forum for deciding a child custody matter, including:

> (1) if another state is or recently was the child's home state;
>
> (2) if another state has a closer connection with the child and his family or with the child and one (1) or more of the contestants;
>
> (3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
>
> (4) if the parties have agreed on another forum which is no less appropriate; and
>
> (5) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section 1 of this chapter.

I.C. § 31-17-3-7(c) (repealed 2007). A child's home state is the state in which the child has lived with a parent for at least six consecutive months. I.C. § 31-17-3-2(5)

(repealed 2007). After the telephone conference between the Indiana and Florida courts it was decided that, "Florida is the home state of [K.B.W.]" because "[Ryan] and [K.B.W.] have resided in Florida since the summer of 2004." (Appellant's App. p. 125).

White relies upon *Smith v. Smith*, 594 N.E.2d 825 (Ind. Ct. App. 1992), to support his contention that Indiana is not an inconvenient forum. However, although some facts of *Smith* are the same as the instant case, *i.e.*, the mother moved her children to Florida and the parents continually sought to modify custody arrangements, the Indiana court never relinquished jurisdiction in *Smith*. The same is not true here; Indiana relinquished its jurisdiction. Thus, we find *Smith* distinguishable and irrelevant to the instant situation.

White also contends the trial court was required to consider his physical disability in determining whether Indiana is an inconvenient forum. We disagree. Without providing support as required under Ind. App. R. 46(A)(8), White argues his equal protection rights will be violated if Indiana relinquishes jurisdiction. Except, our review of the record does not indicate White had a problem filing this appeal, which stems from Marion County although he lives more than fifty miles away from Marion County. Therefore, we find White's disability does not in and of itself make the trial court's decision to relinquish jurisdiction an abuse of discretion.

III. *Americans with Disabilities Act*

Furthermore, White argues his disability should have been considered under the Americans with Disabilities Act (ADA) when the trial court decided to relinquish

jurisdiction. Ryan argues, and we agree, that White may not raise this issue on appeal because he did not present said issue to the trial court and "a party may not raise an issue on appeal that was not presented first to the trial court." *Blairex Laboratories, Inc. v. Clobes*, 599 N.E.2d 233, 237 (Ind. Ct. App. 1992), *trans. denied*. Thus, this issue is waived for our review and we find the trial court did not abuse its discretion by relinquishing jurisdiction to Florida because Indiana is the most convenient forum.

CONCLUSION

Based on the foregoing, we find the trial court did not abuse its discretion by relinquishing jurisdiction to Florida.

Affirmed.

FRIEDLANDER, J., and SHARPNACK, J., concur.